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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 160.

SPRINGFIELD, OHIO, LOCAL No. 352, OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, ET AL.,

Petitioners,

vs.

WILLIAM SETTOS, LESSEE OF LIBERTY THEATRE, D. B. A. LIBERTY THEATRE,

BRIEF OF RESPONDENT CONTRA PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

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STATEMENT OF FACTS.

The respondent, William Settos, operates, as lessee, a motion picture theatre in the city of Springfield, Ohio, known as the Liberty theatre. He employed two employees, one of whom was Everett Thacker, who had

been in his employ eight or nine years (R., 31), and the union had never suggested to the respondent during that time that they would accept as a member of their union, said Everett Thacker (R., 30). At the time the petitioner, Springfield, Ohio, Local No. 352, made its demands upon the respondent that he sign a contract with it, it had only fourteen members and there were no union motion picture operators out of employment and available to the respondent, for employment in the city of Springfield, Ohio (R., 19, and petitioner's amended answer in the trial court, R., 10). The contract tendered to respondent was substantially similar to Respondent's Exhibit "A" in the trial court (Introduced R., 22, R., 41, 42 and 43). There were nine motion picture houses in the city of Springfield, Ohio, and seven of them employed union labor under contract with the petitioner, Local No. 352. Under Clause 8 of the contract presented to respondent all seven of these theatres would have been required to employ four operators. After the issuance of the temporary restraining order by the trial court the union, by its representatives, Arthur W. Lyday and Arthur H. Fix, by letter dated October 26, 1938, proposed to respondent a different contract by which they proposed to accept into membership in their union one of the respondent's two motion picture operators, namely, Mr. Everett Thacker (R., 28).

ARGUMENT.

A. The Petition for a Writ of Certiorari Should Be Dismissed Because It Does Not Appear from the Record That Any Substantial Federal Question Is Involved.

It must appear affirmatively from the record, not only that the federal question was presented to the highest state court, but that a decision on the federal question was necessary to determination of the cause.

Honeyman v. Hanan, 57 S. Ct., 350, 352; 300 U. S., 14, 18; 81 L. Ed., 476, 479.

In **Lynch v. New York**, 55 S. Ct., 16, 17; 293 U. S., 52, 54; 79 L. Ed., 191, 193, this honorable court said:

> "But jurisdiction cannot be founded upon surmise. Nor can claim of jurisdiction be sustained by reference to briefs or statements which are not part of the record.
>
> It is essential to the jurisdiction of this court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

See also, **Public Service Commission of Wisconsin v. Wisconsin Telephone Company**, 309 U. S., 657; 60 S. Ct., 515, and **Joseph D. McGoldrick v. Gulf Oil Corporation**, 309 U. S., 2, 3; 60 S. Ct., 375; 84 L. Ed., 536, where this honorable court said:

> "In the absence of an explicit statement by the Court of Appeals that it annulled the assessment of

> the tax solely because of violation of the federal Constitution we are unable to find that the decision of the highest court of the state did not rest upon an adequate non-federal ground."

The record in this case shows conclusively that no federal question was presented by the defendant-petitioners in either the trial court or the Court of Appeals of Clark county, Ohio. The defendant-petitioners' answer (R., 7) does not raise any federal question. The defendant-petitioners' amended answer (R., 9), which added a fourth defense, not only does not raise any federal question, but by comparison to their answer was an attempt to bring themselves within the law of Ohio as it then existed, by alleging facts which it hoped would constitute a labor dispute, so that peaceful picketing under the **then** Ohio law would have been permissible. The motion for a new trial in the trial court does not raise any federal question (R., 16). It is to be noted that the defendant-petitioners' appeal (R., 17) to the Ohio appellate court is on questions of law and fact, which entitle defendant-petitioners to a trial de novo. Thus, in the appellate court defendant-petitioners could have filed a new or amended answer raising the alleged federal question, but they did not see fit to do so. Their motion for a new trial in the Court of Appeals of Clark county, raises no federal question (R., 55). It is respectfully submitted that neither the opinion of the trial court, Owen, J. (R., 12, 16) nor the opinion of the Court of Appeals of Clark county, Ohio (R., 52, 55) is properly part of the record before this court nor are these opinions part of the record under Ohio procedure. In the case of **Summers v. Thomas Manufac-**

turing Company, 82 O. S., 338, at page 346, the court states:

> "While it is true that judicial opinions do not constitute a part of the record and that a resort cannot be had to them in reviewing courts as the predicate of errors, the relation of judgment to evidence contained in the record is obviously a proper consideration."

The opinions of the trial and appellate courts not being part of the record, are not subject to consideration in error proceedings. Baldwin v. State, 23 O. L. Abs., 147, 157; appeal dismissed in 132 O. S., 302, 7 N. E. (2d) 229, which has appeal dismissed in Painter v. Ohio, 301 U. S., 667; 57 S. Ct., 932; 81 L. Ed., 1332. See, also, Treiber v. Jaster, 55 O. App., 64, 8 N. E. (2d) 581, motion to certify the record to the Supreme Court of Ohio overruled February 3, 1937. Perhaps one of the strongest cases on this point is Will v. McCoy, 135 O. S., 241, 242; 20 N. E. (2d), 371, 372, where the opinion and the journal entry of the Court of Appeals were inconsistent. The Supreme Court of Ohio in that case, at page 242, stated:

> "As a preliminary matter it should be observed that the opinion and journal of the Court of Appeals are not in agreement. According to the journal, the judgment of the trial court was reversed upon the single ground of error in the charge; but the majority opinion includes the additional statement that the verdict is against the weight of the evidence. It is, of course, elemental that a court speaks through its journal. Consequently, when a court's opinion and journal are in conflict, the latter controls and the former must be disregarded."

See also, In re Estate of Ury, 20 O. L. Abs., 226, application for rehearing denied, 20 O. L. Abs., 640.

Section 12223-8 of the General Code of Ohio, Page's General Code Annotated, Volume 9, is as follows:

> "Sec. 12223-8, Transcript of Record. Within ten (10) days after filing the notice of appeal, or the order allowing the appeal or a certified copy thereof, where permission to file the appeal is required, the clerk of the court from which the appeal is taken or a judge thereof, shall, upon being paid the lawful fees and the filing of a praecipe therefor, prepare and file in the court to which the appeal is taken a transcript of the docket or journal entries with such original papers or transcripts thereof as are necessary to exhibit the error complained of. The transcript of the testimony or bill of exceptions or so much thereof as may be necessary for said appeal may be filed within such time as is provided for in the rules of court. In event the transcript and papers are not filed within said time either party may apply to the court to which the appeal is taken to have the case docketed and the court shall order them filed."

This section of the Ohio General Code defines what constitutes the record of a case in Ohio. This contention is supported by the case of Simes v. Dayton-Xenia R. R. Company, 24 O. L. Abs., 595, 597.

Thus, according to the record presented to the Supreme Court of Ohio and presented to this court, no federal question had been raised, either in the Common Pleas Court of Clark county or in the Court of Appeals of Clark county. The first time that the petitioners for a writ of certiorari attempted to raise a federal question was in their assignment of errors filed in the Supreme Court of Ohio on October 17, 1940, being specific assignment No. 8 of the errors therein set forth (R., 61).

It is the undisputed law of Ohio that error proceedings in the Supreme Court are properly dismissed where a constitutional question claimed to be involved in the

case has not been submitted to nor decided by the Court of Appeals. 2 Ohio Jurisprudence, Section 142, Appeal and Error. See, also, 2 Ohio Jurisprudence, Section 544, Appeal and Error, which is as follows:

> "No constitutional question involved: A proceeding in error brought to the supreme court as a matter of right on the claim that a constitutional question is involved will be dismissed if that court finds that no such question, or none which is debatable, is actually involved or if the record discloses that the case can be disposed of without entering upon the consideration of any constitutional question, or that the constitutional question claimed to be involved in the case was not submitted to nor decided by the court of appeals."

The text of Ohio Jurisprudence is borne out by the following cases in the Supreme Court of Ohio:

Hoffman v. Staley, 92 O. S., 505; 112 N. E., 1084;
Zimmerman v. Morris Plan Bank, 113 O. S., 703, 150 N. E., 920;
Cuthbertson v. State, 106 O. S., 658, 140 N. E., 941;
Thatcher v. Penn. O. & D. R. Co., 121 O. S., 205, 167 N. E., 682;
Clarington v Althar, 122 O. S., 608, 174 N. E., 251.

The judgment of the Supreme Court of Ohio which is sought to be reviewed by this petition for a writ of certiorari contains no language from which it can be definitely stated that the federal question which petitioners had sought to raise by their eighth assignment of error, had been considered. The court merely states:

> "On consideration whereof it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said case." (R., 58.)

It is, therefore, respectfully submitted that the Supreme Court of Ohio may and probably did dismiss the appeal, so far as the eighth assignment of error was concerned, because the federal question involved in the eighth assignment of error had not been raised in either the trial court or the Court of Appeals and did not appear from the record before the Supreme Court of Ohio. The phrase, **no debatable constitutional question**, as used by the Supreme Court of Ohio, has no greater import than the phrase, **no substantial federal question**, frequently used by this court.

The federal question must be raised at the time and in the manner required by the established and reasonable practice of the state.

> Penn. Railroad Co. v. Illinois Brick Co., 297 U. S., 477, 56 S. Ct., 556, 80 L. Ed., 796.

We are familiar with the rule of law of the Supreme Court of the United States that if the judgment of the highest state court shows conclusively that the federal question involved had been decided by it and was necessary to its decision that this honorable court will entertain a petition for certiorari and grant the same. This rule of law is illustrated by the cases of

> Hetrick v. Village of Lindsey, 68 L. Ed., 1065, 1066, 265 U. S., 384, 386, 44 S. Ct., 486.
> Matthews v. Huwe, 70 L. Ed., 266, 267, 269 U. S., 262, 265, 46 S. Ct., 108;
> Van Huffel v. Harkelrode, 284 U. S., 225, 230, 76 L. Ed., 256, 261, 52 S. Ct., 115.

However, in these cases the constitutional question was timely raised in the trial court and, therefore, was properly in the record submitted to the Supreme Court of Ohio. The case at bar is distinguishable, therefore, and

should not come within the rule thus announced as there was no constitutional question in the record when the case was presented to the Supreme Court of Ohio except the defendant-petitioners' eighth assignment of error which was not involved in the record below and could not be considered by the Supreme Court of Ohio.

Therefore, it is respectfully submitted that it does not appear affirmatively that the federal question was presented to the Supreme Court of Ohio or that a decision of the federal question was necessary to sustain the judgment of the Supreme Court of Ohio for the Supreme Court of Ohio could properly dismiss the appeal because a federal question had not been raised below.

As a final authority on the jurisdictional question it is submitted that the case of **American Federation of Labor v. Swing**, 85 L. Ed., 513, supports our contentions. A careful reading of this case shows that, although the Supreme Court of Illinois in its decree, affirming the appellate court, one of Illinois' intermediate courts of review, on the question of the preliminary injunction, stated that the complaint properly invoked equity for three reasons: (1) there was no dispute between the employer and his immediate employees, (2) the placards were libelous, (3) they were acts of violence, this court refused to go beyond the final decree of the appellate court which did not embody the language of the Supreme Court of Illinois in affirming the appellate court on the question of the preliminary injunction. This court refused to go outside of the record as presented to it. In that case the petition was for a writ of certiorari to the Supreme Court of Illinois which had dismissed a writ of error to review the final decree of the Court of Appeals of Illinois. This court, therefore, looked only to the lan-

guage of the final decree of the Court of Appeals of the state of Illinois and found therein language which was so broad and all embracing that it came to the conclusion that it rested upon the explicit avowal that peaceful persuasion was forbidden in that case solely because those who were enjoined were not in the defendant's employ. This honorable court then says that it would be improper to dispose of the case otherwise than on the face of the decree which is the judgment now under review.

Applying the reasoning of the **Swing** case to the case at bar, in the case at bar, the Supreme Court dismissed defendant-petitioners' appeal as of right, which is comparable to the Illinois petition in error, on the ground that there was no debatable constitutional question involved. This honorable court will then look to the decree of the appellate court of Ohio (the Court of Appeals of Clark county) to see what decree it has issued, and will find (R., 51) that the decree of the Court of Appeals of Clark county is as follows:

> "This cause came on for trial upon the pleadings, evidence and argument of counsel; the court upon the consideration thereof find on the issues joined for the plaintiff appellee and that the plaintiff is entitled to relief by injunction."

If this honorable court should desire to look further in the record it will find that the decree of the trial court is in substantially the same language (R., 3). Therefore, from the record of this case properly before this honorable court, it is impossible to find that any of the courts of Ohio considered a federal question and decided it adversely to the defendant-petitioners.

Wherefore, it is respectfully submitted that this honorable court should not take jurisdiction in the instant case and that the petition for a writ of certiorari should be denied.

B. There Is No Substantial Federal Question Involved in This Case Because the State Injunction Did Not Deprive the Defendant-Petitioners of Any Personal Liberty Guaranteed to Them Under the Fourteenth Amendment.

The recent pronouncements of this honorable court have in many instances changed the conception of the constitutional rights involved in picketing. Many of the states of the Union, like Ohio, had formerly held under their state laws that picketing was unjustified and, hence, would be enjoined unless there was an actual dispute between the employees and their employer. The first two cases decided by this court to radically change this conception of the law were the cases of **Thornhill v. Alabama**, 310 U. S., 88, 60 S. C., 736, and **Carlson v. California**, 310 U. S., 106, 60 S. Ct., 746. These cases involve respectively a statute of Alabama and an ordinance of Shasta county, California. In both of these cases this honorable court found that the state statute and ordinance were so sweeping in their terms that they were unconstitutional by depriving residents of the state and county, respectively, of rights, privileges and immunities granted to them by the Fourteenth Amendment of the Federal Constitution and, therefore, the laws were stricken down by this court. However, we submit that this court made certain statements in **Thornhill v. Alabama**, supra, which proved conclusively that this honorable court did not intend to hold, that no state statute or ordinance forbidding picketing could be constitutional if the same were drafted to apply to particular instances which would justify the curtailment of the rights of free

speech. In **Thornhill v. Alabama**, supra, this court stated, at page 1100 of 84 Law Ed.:

> "The statute as authoritatively construed and applied leaves room for no exceptions based upon either the number of persons engaged in the prescribed activity or peaceful character of their demeanor, the nature of their dispute with an employer or the restraining character and the accurateness of the terminology used in notifying the public of the facts in dispute."

It is submitted that Mr. Justice Murphy in that statement, by inference suggested that there might be occasions where the freedom of speech might be properly curtailed, due to the **number** of persons engaged in the picketing, the **non-peaceful** character of their demeanor, **nature** of their dispute with an employer, and the **unrestrained** character and **inaccurateness** of the terminology used in notifying the public of the facts of the dispute. Again, on page 1104, 84 Law Ed., the court states:

> "The power and duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and property of its residents cannot be doubted."

On February 10, 1941, this honorable court decided the cases of **American Federation of Labor v. Swing**, 85 L. Ed., 513, and **Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.**, 85 L. Ed., 497. The **Swing** case, supra, presents the following question: Is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding the resort to peaceful persuasion through picketing merely because there was no immediate employer-employee dispute? The question was answered in the affirmative and such a broad

common law policy of a state was held to be unconstitutional.

The **Meadowmoor case**, supra, stands for the proposition that peaceful picketing may be enjoined under certain circumstances, namely, when there has been a background of violence. The language of the court in that case, and in **Thornhill v. Alabama**, supra, is broad enough to include other circumstances than violence alone, which would justify the issuance of an injunction against peaceful picketing.

In **Milk Wagon Drivers Union v. Meadowmoor**, supra, at page 499, 85 L. Ed., the court says:

> "Such a decree arising out of a particular controversy and adjusted to it, raises totally different constitutional problems from those that would be presented by an abstract statute with an overhanging and undefined threat to free utterance."

On the same page the court says:

> "Back of the guaranty of free speech lay faith in the power of an appeal to reason by all peaceful means for gaining access to the mind."

And on page 500, 85 Law Ed., the court further says:

> "Nor can we say that it was written into the Fourteenth Amendment that a state through its courts, cannot base protection against future coercion on an inference of the continuing threat of past misconduct."

The court cites **Ethyl Gasoline Corporation v. U. S.**, 309, U. S., 436, 85 Law Ed., 852, 60 S. Ct., 618, and, again on the same page states:

> "Certainly a state is not confined by the Constitution to narrower limits in fashioning remedies for dealing with industrial disputes than the scope of

discretion open to the National Labor Relations Board."

And again, on page 502, 85 Law Ed., the court says:

"An injunction so adjusted to a particular situation is in accord with the settled practice of equity, sanctioned by such guardians of civil liberty as is Justice Cardozo."

The language of Mr. Justice Murphy, already quoted in the case of **Thornhill v. Alabama**, supra, clearly indicates that freedom of speech might be properly curtailed, based on an unreasonable number of persons engaged in the prescribed activity, the violent character of their demeanor, the nature of the dispute with the employer or the unrestrained character and inaccurateness of the terminology used in notifying the public of the facts of the dispute. This court in the **Meadowmoor** case, supra, approves the following language of Mr. Justice Murphy in the **Thornhill** case, supra.

"It is apparent that one or the other of the offenses comprehend every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer."

Can it be said that the evidence before the courts of Ohio in the instant case would not have justified the injunction granted under the circumstances of the instant case? As stated by this honorable court, in all of the recent cases on the question of free speech, the doctrine is justified on the basis that it is the dissemination of facts for the purpose of gaining access to the mind which is vitally important. In the instant case, the banner carried by the picket bore the legend:

"This theatre is unfair to motion picture operators, Local No. 352."

Bearing in mind that the picketing commenced upon the refusal of the respondent, William Settos, to sign the contract presented to him by Local No. 352, introduced in evidence (R., 22) (Respondent's Exhibit A, R., 41, 42, 43) what impartial person would say that Mr. Settos, doing business as the Liberty Theatre, was unfair to Local No. 352 because he refused to sign that contract? What unbiased person would say that Mr. Settos was unfair because he refused to employ union motion picture machine operators supplied by party of the second part, Local No. 352? What impartial person would say that Mr. Settos was unfair to Local No. 352, when he refused to sign a contract which was based upon the by-laws and working rules of the other party to the contract, not embodied therein, or which was subject to the rules and regulations of the International Alliance of Theatrical Stage Employees and Motion Picture Operators of the United States and Canada, when such rules and regulations were not presented to him? (Subparagraph 4 of Respondent's Exhibit A.) What unbiased person would say that Mr. Settos was unfair to Local No. 352 because he did not discharge his two employees, one of whom had been with him eight or nine years, and employ only motion picture machine operators supplied to him by Local No. 352? What unbiased person would say that Mr. Settos was unfair to Local No. 352 because he wished to have something to say about the character, personal appearance and other personal characteristics of his two employees with whom he was intimately and daily associated? What unbiased person would say that Mr. Settos was unfair to Local No. 352 by refusing to sign a contract which Local No. 352 could not fulfill? The amended answer of Local No. 352 admits that it consisted of

fourteen members and two apprentice members. This amended answer was filed December 21, 1938 (R., 3) and comparing the admission of the amended answer with the testimony of Mr. Strong, together with the stipulation by Mr. Keifer, counsel for Local No. 352, in the trial court (R., 22) it is apparent that one of the apprentice members had been taken into the union after the issuance of the temporary restraining order and that the other alleged apprentice was not a member but that his application was still pending. Thus, it is apparent that at the time the union offered this contract to Mr. Settos it had only fourteen members. The defendant-petitioners in their amended answer (R., 11) denied that said Local No. 352 ever requested plaintiff to discharge any of his employees. This denial in the amended answer is not borne out by the terms of the contract presented to Mr. Settos (Respondent's Exhibit A; R., 41, 42, 43) nor is it borne out by the letter dated October 26, 1938, written by Mr. Arthur W. Lyday and Arthur H. Fix (Respondent's Exhibit D; R. 47, introduced in evidence, R. 28). This letter clearly indicates that Local No. 352, after the restraining order had been granted and picketing had ceased, was offering some concessions to Mr. Settos, one of those being that it would accept into membership one of his employees, named Mr. Thacker. The letter, by inference, refuses to accept the other employee.

Let it be remembered that the evidence in this case shows conclusively that this is not a dispute where the union had attempted to unionize the respondent's employees and had failed as the evidence clearly shows that the union had never attempted, prior to demanding that Mr. Settos sign the contract submitted to him and picketing his place of business, to persuade his employees t

join the union. The evidence further shows that the union was not in position to fulfill the contract had Mr. Settos signed it, as it did not have sufficient members to furnish the employees to Mr. Settos and that it was asking Mr. Settos to sign an unfair contract which it was not demanding of the other seven moving picture houses which employed union labor in the city of Springfield. This contention is borne out by the fact that each of the other seven moving picture houses which employed union labor under the alleged uniform contract would have been required to employ four operators which would have required at least twenty-eight members of the union (R., 32, 33). The record in this case also shows conclusively that the union resorted to threats in order to coerce and intimidate Mr. Settos into signing the contract submitted to him. (Mr. Settos' testimony, R. 33, 34. Also admissions in defendant-petitioners' amended answer, R. 10.)

This honorable court, in the **Meadowmoor** case, supra, at page 500 Law Ed., stated:

> "It is not for us to make an independent valuation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois, speaking through her Supreme Court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority."

In view of the decree of the trial court and the Court of Appeals in this record, which are to the effect only that the court finds on the issues joined for the plaintiff and that the plaintiff is entitled to relief by injunction,

can it be said that there are no equitable doctrines involved which on the state of the record and the local situation before the trial court would justify the injunction? We submit that it cannot so be said, for, as heretofore pointed out, the evidence included threats of coercion, inequitable demands and false statements of the situation as revealed by the evidence and a failure on the part of Local No. 352 and its members to use picketing as a method of communicating **facts** of the dispute to the public as the record clearly shows that the union attempted to give the public no **facts** concerning the dispute. It is one of the fundamental maxims of equity that one seeking equity must come into equity with clean hands and who can say that it is equitable on the part of organized labor to seek the discharge of two satisfied employees who do not belong to their union, or any other, without giving them every opportunity to join the union.

On the same day that this honorable court decided the **Swing** and **Meadowmoor** cases, supra, it denied a writ of certiorari to the Supreme Court of Ohio to review **Crosby v. Rath**, 136 O. S., 352. The defendant-petitioners would give this honorable court the impression that the Supreme Court of Ohio has ignored and is continuing to ignore the holdings of this honorable court as pronounced in the **Swing** and **Meadowmoor** cases, supra. It is respectfully submitted that that is not the case and that the Supreme Court of Ohio will follow the pronouncements of this honorable court in all cases coming within the doctrines of the **Swing** and **Meadowmoor** cases. While it may be idle to speculate as to why this honorable court denied the writ of certiorari in the case of **Crosby v. Rath**, supra, it is submitted that in view of the facts of that case as applied to the **Meadowmoor** case, this honorable

court could not have done otherwise. While the Supreme Court of Ohio, in the **Crosby** case did lay down the law of Ohio as forbidding even peaceful picketing, unless there was a relation of employer and employee, the facts of the **Crosby** case show that there had been a background of violence similar to that of the **Meadowmoor** case. Therefore, in view of the pronouncement in the **Meadowmoor** case, this honorable court could not have properly reversed the Supreme Court of Ohio in the **Crosby** case and in view of the pronouncements of the **Swing** case this honorable court had already indicated to the Supreme Court of Ohio what the law of the land was from that time forward so far as peaceful picketing might be concerned as a general proposition of law. The Supreme Court of Ohio properly denied the defendant-petitioners' application for a rehearing in spite of the fact that the **Swing** and **Meadowmoor** cases were expressly called to its attention for as heretofore pointed out, under Argument A, the federal question had not been properly presented to the Supreme Court of Ohio by the record on the appeal to the Supreme Court of Ohio and, secondly, the Supreme Court of Ohio properly felt that the peculiar circumstances developed by the record in the instant case caused it to fall within one or the other of the exceptions to the **Swing** case which had been set forth by this honorable court in the **Meadowmoor** case and in **Thornhill v. Alabama**.

Wherefore, it is respectfully submitted that the petition for a writ of certiorari to the Supreme Court of Ohio should be denied.

Respectfully submitted,

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